



May 25, 2001

Ms. Elizabeth P. West
Personnel Attorney
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR2001-2163

Dear Ms. West:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 147691.

The Texas Natural Resource Conservation Commission (the "commission") received a request for information related to Job Posting #01218, Accountant VI. You inform us that through telephone conversations, the commission clarified with the requestor that he was seeking the applications of all who were interviewed for the position, the interview questions and the applicants' answers, and the grading of the interview questions and answers.¹ You state that the commission will make available to the requestor copies of the applications of all who were interviewed for the position, a copy of the grading of the interview questions and answers, and redacted copies of the interview questions and answers. You claim that the information redacted from the interview questions and answers is excepted from disclosure under section 552.122 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.122(b) excepts from disclosure test items developed by a licensing agency or governmental body. In Open Records Decision No. 626 (1994), this office determined that the term "test item" in section 552.122 includes any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated, but does not encompass

¹See Gov't Code § 552.222(b) (providing that if information requested is unclear to a governmental body, it may ask the requestor to clarify the request).

evaluations of an employee's overall job performance or suitability. Additionally, when answers to test questions might reveal the questions themselves, the answers may be withheld under section 552.122(b). *Id.* at 8. Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. *Id.* at 6.

You seek to withhold question numbers 1-4, 7, 9-14, 17, and 18, as well as the model and actual answers given by interviewees, as test items under section 552.122. Having reviewed the submitted questions you seek to withhold, we conclude that question numbers 4, 10-12, and 18 are "test items" as contemplated by section 552.122(b). Therefore, you may withhold these questions and their respective model and actual interviewee answers under section 552.122(b). We find that the remainder of the questions for which you seek protection evaluate an employee's overall job suitability, and are not "test items" under section 552.122(b). Therefore, question numbers 1-3, 7, 9, 13, 14, and 17, along with their respective model and actual interviewee answers, must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Michael A. Pearle".

Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 147691

Encl. Submitted documents

cc: Mr. Tosan Eruwayo
1316 Deupree Drive
Austin, Texas 78753
(w/o enclosures)